

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application:

James Carl Schmidt

Serial No.: 10/636,069

Filed: 08/06/2003

For: PROTEIN ENHANCED LOW
CARBOHYDRATE SNACK FOOD

Confirmation No. 9856

Group Art Unit: 1761

Examiner: WEIER, ANTHONY J.

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION UNDER 37 C.F.R. §1.132

I, James Carl Schmidt, being over the age of 18, hereby state and declare as follows:

1. I am the sole inventor of the subject matter claimed in U.S. Patent Application No. 10/636,069, entitled "PROTEIN ENHANCED LOW CARBOHYDRATE SNACK FOOD," filed 08/06/2003 ("the '069 application").
2. I have read the rejection of my patent claims by the U.S. Patent and Trademark Office relating to the Marsland published patent application, U.S. 2003/0091698.
3. I am a professional chef.
4. I followed the teachings in the Marsland publication to make a wafer to compare the light and airy wafer of my patent claims.
5. In following the Marsland teachings, I looked to paragraph 18, where Marsland described that his invention could include food items having as low as 25%. I also looked to each of his examples to see how to prepare the food items according to Marsland's teachings. Each started with dry ingredients, especially wheat protein isolates, and each results in a conventional solid dough rather than a pumpable fluid batter.
6. Nothing in Marsland teaches one of skill in the art, another professional chef, to carefully design a sequence of adding ingredients to maximize

the stability of proteins in such a way that a high-protein wafer batter is light and fluid enough to be pumped into wafer pans and that, when baked, result in light wafer cookies that are high in protein but nevertheless of a desirable wafer consistency and taste.

7. I prepared a wafer according to the Marsland recipe having a protein content of 29%, which is very near the lowest end that Marsland teaches. The dough was solid, and the end wafer very dense. The end wafer density was 240 grams per 450 mm X 350 mm sheet. Since 29% is at or near the low end of protein content for a Marsland wafer, this density is as "light and airy" as a wafer can get if it is prepared according to the teachings of Marsland.

8. In contrast to Marsland, I prepared two sets wafers according to the methods taught in the specification of my patent application. I started with wet ingredients, and created a pumpable fluid to pump into a baking sheet to make my high protein wafers. The first set of my wafers had a protein content of about 26%, and the second set of my wafers had a protein content of about 80%.

9. The density of the wafers of the first set varied from 100 grams to 103 grams per 450 mm X 350 mm sheet. This is less than half the density of Marisand's lightest wafer, even though the protein content is about the same.

10. The density of the sheet of the second set varied from 110 grams to 120 grams per 450 mm X 350 mm sheet. This is less than about half the density of Marsland's lightest wafer, even though the protein content is more than 2.5 times that of Marsland's lightest wafer.

11. Based upon the teachings of Marsland, it is a surprising result to one of ordinary skill in the art that I could achieve wafers having a protein content from about 26% to about 80% that nevertheless have a density of less than about half that of Marsland's lightest wafer.

12. Because teachings of Marsland do not suggest a departure from the conventional methods taught in the Marsland specification, no modification of Marsland could lead to a light, airy high-protein wafer cookie as claimed in the present invention.

13. I further declare that all statements made on my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both,

under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 4-21-06

Signature: James Schmidt